HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. A. No. 487 of 2000

Date of Decision: 11.10.2007

State of H.P. ……. Appellant

Versus

Manohar Lal …….. Respondent.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? No

For the appellant : Mr.Ashok Chaudhary Addl. A.G

For the respondent : None.

Sanjay Karol, J. (Oral)

The present appeal arises out of the judgment dated 29.4.2000 passed by the Judicial Magistrate Ist Class (III), Shimla, in Criminal Case No. 82/2 of 1996/95 titled as State v. Manohar Lal, acquitting the accused of the charged offence.

As per the case of the prosecution, on 29.7.1995 at 7.30 P.M. accused called the complainant Smt. Sheela Devi (PW-1) from her house and as soon as she came out, the accused quarreled and caught her from her neck and Smt. Kubza Devi (PW-2) and Shri K. R. Kashyap (PW-4) intervened to save the complainant. In the process, Shri K. R. Kashyap also received an injury on his thumb. Complainant's shirt Ext.PW-1/A

was torn by him. The matter was reported to the police and the injured were got medically examined and MLC Ext.PW-6/A and marks 'X' & 'Y' were collected by the Investigating Officer. Site Plan Ext.PW-7/C and statements of witnesses Ext.PW-1/B & Ext.PW-7/B were also recorded. The investigation was carried out pursuant to the registration of the FIR Ext.PW-7/A dated 29.7.1995 registered with Police Station, Dhali.

With the completion of the investigation, the challan was filed in the Court for trial. The accused was charged for the offences under Sections 325, 323 & 451 IPC. In support of its case, the prosecution examined seven witnesses and the statement of the accused u/s 313 Cr.PC was recorded whereby he took a defence that his wife had lodged an FIR against the complainant and the witnesses and that a false case has been registered in order to harass the accused.

The Court below, after examining the statements of the witnesses discharged the accused on the ground that since the alleged quarrel took place in the common Verandah, jointly used by all the parties, therefore, essential ingredients to constitute an offence under Section 441 IPC were missing.

Qua the other offences, the Court found the depositions of the witnesses to be contradictory. In any case, it did not prove the guilt of the accused beyond reasonable doubt.

Smt. Sheela Devi (PW-1) is the complainant. Smt. Kubza Devi (PW-2) is an independent witness. Shri Dhani Ram

(PW-3) is also an independent witness. All of the witnesses are neighbours. Shri K. R. Kashyap (PW-4) is husband of PW-2. PW-5 is a formal witness and Dr. Dev Raj Sharma (PW-6) has medically examined PW-4. Shri Tahir Khan (PW-7) is the Investigating Officer who has carried out the investigation.

Through the statements of PW-1, PW-4 & PW-7, it has come on record that the wife of the accused had made a complaint pursuant to which case was registered against PW-1, PW-2 and PW-4. Thus, it has come on record that there is animosity between the parties and the statements of the witnesses need to be examined with care and caution. It has also come on record through the statements of PW-1 to PW-4 that the alleged quarrel took place between the parties in the common Verandah used by all.

Perusal of site plan Ext.PW-7/C would show that there are number of houses in the building. It is admitted case of the parties that the witnesses and the accused are also residing in the same building. PW-3 has not supported the case of the prosecution at all. As per his version, he reached the spot and found that all the three persons were quarreling with each other and was not in a position to confirm as to who had started the quarrel. According to this witness, there are 7 to 8 other residential houses and he has seen PW-4 fallen down.

Since the quarrel took place between the parties in the Verandah which is jointly used by all the parties, it cannot be said that an offence u/s 451 IPC is made out.

As per PW-6, the injury received by PW-4 could have been caused by fall. PW-3 does not even say that the accused had assaulted any of the persons.

PW-1, PW-2 & PW-4 are the persons against whom there is already a complaint filed by the wife of the accused. Further, PW-2 in her cross-examination has admitted that she cannot say with certainty as to who had beaten whom. The Court below has found the statements of PW-1 & PW-2 to be contradictory. The contradiction is material inasmuch as according to PW-1, at the time of alleged incident someone had called her husband and when she came in the Verandah accused suddenly caught hold of her neck and started quarrelling whereas as per PW-2 she had gone to the house of PW-1 to inform her that someone was calling her husband. Further, there are contradictions in the statements of PW-1, PW-2 & PW-3 which are material and their statements cannot be relied upon to convict the accused as their version does not appear to be truthful and correct. Why no independent witness was examined has not been explained.

Accused has been acquitted by the Court below. I have perused the record and find that there is no perversity in appreciation of the material on record.

For all the aforesaid reasons, the appeal is dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

October 11, 2007
(rana)